



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 23, 1992

Mr. Grover Russell, Jr.  
Center City Attorney  
P. O. Box 311  
Center, Texas 75935

OR92-560

Dear Mr. Russell:

The City of Center asks whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID # 14982.

In 1991, the City of Center, Texas (the "city"), and Jack County, Texas (the "county"), were competitors for Urgent Need Fund grants with the Texas Department of Housing and Community Affairs (TDHCA). The City was advised by TDHCA that "due to overwhelming demand" no funds were currently available; however, TDHCA advised the city that "if sufficient deobligated funds from other contracts become available to fund this project, a [Texas Community Development Program] representative will contact the city concerning the preparation of a grant contract." The city's application is one among many that will receive further consideration if funds become available. The county's application was rejected by TDHCA. The county has filed a protest with TDHCA concerning the rejection of its application and has requested a copy of the city's grant application. The city claims that because the city and county are competitors for grants, the city's grant application is protected by Open Records Act section 3(a)(4).

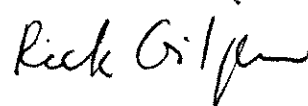
Section 3(a)(4) excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect governmental interests in commercial transactions. Open Records Decision No. 593 (1991) at 2. Section 3(a)(4) applies primarily to competition for governmental contracts and specifically protects the sealed bid process. Decisions under section 3(a)(4) generally involve specific commercial and contractual matters. Open Records Decision No. 463 (1987). It has been applied most often to competitive bidding situations prior to the award of a contract. *See, e.g.,* Open Records Decision Nos. 541 (1990) at 4-5; 331 (1982); 232 (1979) at 4; 75

(1975). Section 3(a)(4) has also been applied to protect the interests of governmental bodies that have demonstrated that they are authorized by law to compete in the marketplace with private enterprise. Open Records Decision No. 593. In Open Records Decision No. 593, this office held that the Teacher Retirement System, as an entity that is authorized by both constitutional and statutory law to invest its securities, may be deemed, with regard to those investments, a "competitor" in the marketplace for purposes of section 3(a)(4). Accordingly, certain information which could harm the system's competitive situation was held to be excepted from public disclosure under section 3(a)(4). A governmental body, however, may be afforded the right to claim the "competitive advantage" aspect of section 3(a)(4) only where competition with private enterprise is authorized by law. *Id.* ; *see also* Open Records Decision No. 604 (1992).

We have considered your arguments and have examined the documents submitted to us for review. You have not demonstrated, nor do the submitted documents demonstrate on their face, that the city in this instance is competing in the marketplace with *private* enterprise. Thus, with respect to this instance, we conclude that the city is not a "competitor" within the meaning of section 3(a)(4) of the Open Records Act. You have not demonstrated how section 3(a)(4) otherwise applies to the requested information. Accordingly, the requested information may not be withheld under section 3(a)(4) and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-560.

Very truly yours,



Geoffrey Hennessey  
Assistant Attorney General  
Opinions Committee

GH/GCK/lmm

Ref: ID# 14982  
ID# 15101  
ID# 15221

cc: Mr. R. Kirk Franklin  
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